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09/536,345	03/25/2000	Richard Polevoy	2340-1-008	3087

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EXAMINER

HO, THOMAS Y

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 05/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/536,345

Applicant(s)

POLEVOY ET AL.

Examiner

Thomas Y Ho

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-19,21 and 23-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2,4-19,21,23-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 11, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard USPN5642545 in view of Harbison USPN3634894, and further in view of Davis USPN5456519.

As to claim 1, Howard discloses:

- A bed frame comprising side rails having ends (Fig.3, enclosed by 9), cross members (Fig.3, enclosed by 3) affixed at junction points to said side rails intermediate said ends.
- Protective shields 3/9 affixed to said bed frame and adapted to enclose the ends of said side rails and said junction points of said side rails and said cross members to cover sharp ends at said locations.

Howard fails to disclose or suggest:

- Said bed frame having leg assemblies extending downwardly from said junction points of said cross members and said side rails.
- The protective shields comprising molded plastic housings.

Harbison discloses a bed frame/crib construction having leg assemblies 30/36 extending downwardly from junction points of cross members 17 and side rails 14 to give structural rigidity

Art Unit: 3677

and to prevent infants from falling out of a crib. It can assumed that the bed frame/crib disclosed by Howard also has these structures (as do almost all cribs), but Harbison is cited to present further motivation and evidence. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bed frame disclosed by Howard to have leg assemblies, as taught by Harbison, to give structural rigidity and prevent infants from falling out.

Davis discloses that cushions can be made of either molded plastic or polyurethane foam, indicating the equivalence of the two mediums (col.6, ln.15-18) to provide cushioning support. Howard discloses that the protective shields are made of polyurethane foam, or any other comparable material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the protective shields disclosed by Howard to be made of molded plastic, as taught by Davis, because they are equivalent mediums, and to provide cushioned support.

As to claim 11, Howard discloses:

- A protective shield 3/9 to enclose and contain a sharp edge or corner at at least one location about a bed frame comprising side rails having ends and cross members joined to said side rails.
- Said protective shield comprising first and second housings.
- Said first and second housings joined together and having free ends.
- Said first and second housings having an interlocking securing means 4/7 at said free ends thereof.

Art Unit: 3677

- Said housings adapted to be affixed about said at least one location of said bed frame member to enclose and contain the sharp edges or corners by joining the interlocking securing means at said free ends of said first and second housings.

Harbison discloses the following not disclosed by Howard:

- The bed frame comprising legs 30/36 extending downwardly from the junction of said cross members 17 and said side rails 14, and brackets 24 adapted to affix a headboard 16 to said bed frame.

Davis discloses the following not disclosed by Howard:

- The protective shields comprising molded plastic housings.

As to claim 13, Howard discloses:

- Said housings 3/9 are adapted to be affixed about a location enclosing and containing legs of a bed frame member.

As to claim 14, Howard discloses:

- Said housings are adapted to be affixed about a location enclosing and containing junctions of a cross member and a side rails of a bed frame.

As to claim 15, Howard discloses:

- Said housings are adapted to be affixed about a location enclosing side rails of a bed frame.

As to claim 16, Howard discloses:

- Said housings are adapted to be affixed about a location enclosing ends of side rails, junctions of cross members and side rails, legs and side rails to a bed frame.

Art Unit: 3677

Claims 2, 12, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard USPN5642545 in view of Harbison USPN3634894, and further in view of Davis USPN5456519, and further in view of Dees USPN5950260.

As to claim 2, Howard discloses:

- At least two of said first and second housings 3/9 having free ends.
- Said protective shields having means 4/7 to affix said free ends together to affix said protective shields to said bed frame.

Howard fails to disclose or suggest:

- First and second housings joined together by a living hinge.

Dees discloses a panel having living hinge joints 14 so that the body (which can be plastic) can be folded along the hinge joints (col.4, ln.1-9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first and second housings disclosed by Howard to have living hinges, as taught by Dees, so that the body can be folded.

As to claim 12, Dees discloses the following not disclosed by Howard:

- Said hinge is a living hinge.

As to claim 32, Dees discloses the following not disclosed by Howard:

- Said first and second housings are joined together by means of a hinge.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard USPN5642545 in view of Harbison USPN3634894, and further in view of Harty USPN5568817.

As to claim 4, Howard discloses:

- A bed frame having sharp edges at at least one location.

Art Unit: 3677

- Said at least one location comprising side rails having ends, cross members affixed at junction points to said side rails intermediate said ends.
- Protective shields 3/9 comprising at least first and second housings having formed peripheral surfaces that are joined together by means of a hook and loop fastener.
- Said protective shields affixed to said at least one location of said bed frame to enclose and contain the sharp edges at said at least one location.

Harbison discloses the following not disclosed by Howard (refer to the rejection of claim 1 above):

- Leg assemblies 30/36 extending downwardly from said junction points of said cross members 17 and said side rails 14, and brackets 24 adapted to affix a headboard 16 to said bed frame.

Howard fails to disclose or suggest:

- Snap fit in place of the hook and loop fastener.

Harty discloses the equivalence of hook and loop fasteners and snap fit assemblies (col.4, ln.14-24), and discloses the use of snap fit assemblies to attach a body 10 to a bed frame.

Furthermore, Howard discloses that other comparable fastening means could be used in place of the hook and loop fastener (col.2, ln.49-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the hook and loop fastening means disclosed by Howard with a snap fit fastener, because they are equivalent means of fastening, and to attach the body to a bed frame.

As to claim 5, Howard discloses:

Art Unit: 3677

- A bed frame having sharp edges at at least one location comprising side rails having ends, cross members affixed at junction points to said side rails intermediate said ends.
- Protective shields 3/9 comprising at least first and second housings (halves) joined together and having free ends.
- One of said free ends of said at least first and second housings has a hook 7 extending therefrom and said other free end of said other housing has a loop 4 adapted to receive said hook 7 to affix said free ends together.
- Said protective shields adapted to be affixed to said bed frame at said at least one location to enclose the sharp edges at said at least one said location.

Harbison discloses:

- Leg assemblies 30/36 extending downwardly from said junction points of said cross members 17 and said side rails 14, and brackets 24 adapted to affix a headboard 16 to said bed frame.

Harty discloses:

- One of said free ends has a tab 25 extending therefrom and said other free end 24 of said other housing has an aperture adapted to receive said tab to affix said free ends together.

Claims 6, 8-10, 18, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard USPN5642545 in view of Davis USPN5456519.

As to claim 6, Howard discloses:

- A protective shield 3/9 to enclose and contain sharp edges of a bed frame member.

Art Unit: 3677

- Said protective shield comprising first and second housings.
- Said first and second housings having a securing means 4/7 at said free ends thereof.
- Said housings adapted to be affixed about said sharp edges of a bed frame to enclose and contain the sharp edges.

Davis discloses the following not disclosed by Howard (refer to the rejection of claim 1 above):

- Molded plastic housings.

As to claim 8, Howard discloses:

- Said shield 3/9 is adapted to be affixed to a bed frame member when said free ends are affixed together.

As to claim 9, Howard discloses:

- Said shield 3/9 is adapted to be affixed to a leg assembly.

As to claim 10, Howard discloses:

- Said shield is adapted to be affixed to at least one side rail.

As to claim 18, Howard discloses:

- A bed frame construction having side rails and cross members affixed to said side rails and positioned between said side rails. This is a Jepson type claim and this limitation is admitted prior art.
- Leg assemblies located adjacent said junctures of said side rails and said cross members. This is a Jepson type claim and this limitation is admitted prior art.

The improvement comprising:

- A protective shield 3/9 comprising a plurality of housings.

Art Unit: 3677

- Said housing being joined together and having free ends including interlocking means 4/7 to affix said free ends together.
- Said housings being affixed to said bed frame to enclose said ends of said side rails.
- Said junctures of said side rails and said cross members by affixing said free ends together by said interlocking means.

Davis discloses the following not disclosed by Howard:

- Molded plastic housings.

As to claim 26, Howard discloses:

- A protective shield 3/9 to enclose and contain a sharp edge or corner of a structural or ornamental member.
- Said protective shield comprising first and second housings (halves of 3 and 9).
- Said first and second housings joined together and having free ends.
- Said first and second housings having an interlocking securing means 4/7 at said free ends thereof.
- Said housings adapted to be affixed about said sharp edge or corner of a structural or ornamental member to enclose and contain a sharp edge or corner by joining the interlocking securing means at said free ends of said first and second housings.

Davis discloses the following not disclosed by Howard:

- Molded plastic housings.

Claims 7, 17, 21, 27-28, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard USPN5642545 in view of Davis USPN5456519, and further in view of Dees USPN5950260.

Art Unit: 3677

As to claim 7, Dees discloses the following not disclosed by Howard (refer to the rejection of claim 2 above):

- Said hinge is a living hinge.

As to claim 17, Howard discloses a method of protecting locations of a bed frame having sharp edges comprising:

- Providing a pair of housings 3/9 joined together (each of the halves of 3 and 9 are joined together) and having free ends.

Davis discloses the following not disclosed by Howard (refer to the rejection of claim 1 above):

- Molded plastic housings.

Dees discloses the following not disclosed by Howard:

- Joined together by a living hinge.

As to claim 21, Dees discloses the following not disclosed by Howard (refer to the rejection of claim 2 above):

- Said hinge is a living hinge 14.

As to claim 27, Dees discloses the following not disclosed by Howard:

- Said first and second housings are joined together by means of a hinge.

As to claim 28, Dees discloses the following not disclosed by Howard:

- Said hinge is a living hinge 14.

As to claim 31, Dees discloses the following not disclosed by Howard:

- Said first and second housings are joined together by means of a hinge.

As to claim 33, Howard discloses:

Art Unit: 3677

- First and second housings (each half of 3 and 9 is a housing).

Dees discloses the following not disclosed by Howard:

- Joined together by means of a hinge 14.

Claims 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard USPN5642545 in view Davis USPN5456519, and further in view of Malm USPN2600556.

As to claim 19, Howard discloses:

- First and second housings (each of the halves of each section 3 and 9 are a housing) adapted to be joined together.

Davis discloses the following not disclosed by Howard (refer to the rejection of claim 1 above):

- Molded plastic housings.

Howard fails to disclose or suggest:

- Housings adapted to enclose substantially the entire length of said side rails.

Malm discloses a bed frame/crib/playpen wherein housings are adapted to enclose the entire length of rails 12 to protect the head of an infant from the rail (col.1, ln.17-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the housings disclosed by Howard to enclose the length of the side rails, as taught by Malm, to protect the head of an infant from the rail.

As to claim 23, Howard discloses:

- Said interlocking means 4/7 having interlocking peripheral edges adapted to be fastened together to join said free ends of said housing together.

Malm discloses the following not disclosed by Howard:

Art Unit: 3677

- Adapted to be snapped together 27/29.

Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard USPN5642545 in view of Quintile USPN5628080.

As to claim 24, Howard discloses:

- A protective mounted shield 3/9 for a bed frame.
- Said shield having a pair of housings adapted to be joined together to enclose a structural member of a bed frame having sharp edges to provide protection to a user of a bed frame.

Howard fails to disclose or suggest:

- Said shield having indicia permanently placed on said shield.

Quintile discloses a shield 10 having indicia permanently placed thereon because the appearance of the corners is important in marketing and sale. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shield disclosed by Howard to have indicia thereon, as taught by Quintile, for marketing purposes.

As to claim 25, Howard discloses:

- A bed frame having a plurality of structural members.
- At least one of said structural members having sharp edges and having a protective shield 3/9 comprising a pair of housings affixed together to enclose the sharp edges of said at least one structural member to provide protection to a user of the bed frame.

Quintile discloses the following not disclosed by Howard:

- Said protective shield 10 having indicia permanently placed thereon indicating the source of the bed frame.

Art Unit: 3677

Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard USPN5642545 in view of Davis USPN5456519, and further in view of Harty USPN5568817.

As to claim 29, Howard discloses:

- Said interlocking securing means 4/7 comprises a hook 7 on one of said first and second housings and an loop 4 on the other of said first and second housings and said hook interlocks into said aperture to join said free ends of said first and second housings together.

Harty discloses the following not disclosed by Howard (refer to the rejection of claim 4 above):

- A tab and aperture 24/25 in place of the hook and loop.

As to claim 30, Howard discloses:

- Said interlocking securing means 4/7 comprises interlocking edges on said free ends of said first and second housings adapted to be fastened together to join said free ends of said first and second housings together.

Harty discloses the following not disclosed by Howard:

- Housings snapped together.

Response to Arguments

Applicant's arguments with respect to claims 1-2, 4-19, 21, and 23-33 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues against the use of Quintile in a combination reference, citing the use of hindsight to make a rejection. The examiner disagrees. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be

Art Unit: 3677

recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Quintile does in fact disclose motivation for the structure of the shield as a whole, and so Quintile has once again been used in a combination rejection along with new art under 35 USC 103 (a).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

USPN1001148 to Kapelman discloses a bed frame.

USPN2951252 to Roche discloses a bed frame rail end cap.

USPN4646371 to Nowell discloses a bed frame.

USPN4467486 to Schatz discloses a headboard bracket.

USPN4827545 to Arp discloses a removable covering for a bed.

USPN5607149 to van Nimwegen discloses a covering having a living hinge.

USPN6305672 to Case discloses a fence protector apparatus.

USPN6401281 to Younge discloses bed rail pads.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Y Ho whose telephone number is (703)305-4556. The examiner can normally be reached on M-F 10:00AM-6:00PM.

Art Unit: 3677

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J Swann can be reached on (703)306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703)872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-1113.

TYH
May 6, 2003



J. J. SWANN
SUPERVISORY PATENT EXAMINER
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